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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,780	01/10/2007	Ewald Schmon	7400-X06-163	6277
27317 7590 07/29/2009 Fleit Gibbons Gutman Bongini & Bianco PL 21355 EAST DIXIE HIGHWAY SUITE 115 MIAMI, FL 33180				
EXAMINER				
JONATIS, JUSTIN M				
ART UNIT		PAPER NUMBER		
3752				
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07/29/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/597,780

Applicant(s)

SCHMON ET AL.

Examiner

JUSTIN JONAITIS

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 May 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office action is responsive to the Applicant's Arguments and Remarks filed on 05/07/2009.
2. Claims 11 and 12 have been cancelled.

Drawings

3. The drawings were received on 05/07/2009. These drawings are acceptable and overcome the drawing objections of the Non-Final Rejection dated 02/12/2009.

Claim Rejections - 35 USC § 112

4. Claims 11 and 12 have been cancelled to overcome the previous 112 First paragraph rejection of the office action dated 02/12/2009.
5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 5 & 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the valve does not need to be a snap fit and is capable of being a gripping element instead as stated in independent claim 1.
7. Claim 7 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, it's unclear where the closure element must be inserted. For examination purposes examiner will assume the closure element being inserted is equivalent to the closure element being in the closed position.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 1-10, & 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. PG-Pub #2003/0209568 to Douglas et al. in view of U.S. Patent #5,588,562 to Sander et al.

In re claims 1-10 & 15, Douglas teaches a fluid reservoir for a paint gun with a receptacle (container (8)) and a lid (lid (10)), the fluid reservoir having a connecting element (connector tube (15)) in order to place the fluid reservoir on the paint spray gun or an adapter, wherein the receptacle has a ventilation part (vent hole (8a)) arranged on the flat portion of the receptacle.

Douglas fails to teach the ventilation part having a valve housing with a corresponding closure element that has two valve seats arranged one behind the other in the direction of flow wherein the closure element can be displaced relative to the valve housing between a first closed off position and a second position in which equalization of pressure is possible, and a second position via a snap fit or gripping element.

However, Sander et al. teaches it is known to use a valve member (push-pull closure (10) is a valve which allows flow in the open position and would allow the container to equalize the pressure between the container and the atmosphere, and the sealing of the container in the closed position) which has a hollow cylindrical projection for a valve housing (bottle neck (18)) and a corresponding closure element (top cap (25)), and the valve member having 2 valve seats provide a sealing surface arranged one behind the other in the direction of flow which are separate from each other (valve seats provided by annular flanges (31)), wherein the closure element can be displaced relative to the valve housing between a first valve position, in which ventilation part is closed off (See Sander et al. Figure 2), and a second valve position in which an equalization of pressure between the interior of the container and the environment is possible by way of gap between components and the opening (27) of the top cap, wherein the valve position is fixed in a valve position via a gripping element (frictional grip between flanges and walls of closure element). Where the sealing surface of the first valve seat is formed by a wall (inner walls of top cap (25)) and the sealing surface of the second valve seat is formed by

outer wall (annular flanges (33) & (34)) of the projection (bottle neck (18)). The closure element being formed from a hollow cylindrical body with a plug projecting into the interior of the base body (interior of closure element, is projected into the interior of it's cylindrical body and functions as a plug for the ventilation part (conical legs (24) and conical opening formed by spaces between the legs) onto the end of which a stopper (the conical walls in direct connection with conical legs (24) and conical opening formed by spaces between the legs) engages and closes off the ventilation part of the ventilation part to form a first sealing surface and simultaneously the inner surface of the base body rests against outer wall of projection to form a second sealing surface (flanges engage sides of bottle neck (18) portion).

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a sliding valve mechanism as disclosed by Sanders et al. in Douglas, as such mechanism would allow for a ventilation member that can easily and quickly be manually operated to be opened to allow equalization of pressure and closed to seal the container.

In re claim 13, Douglas in view of Sander et al. does disclose the outlet opening formed in the connecting element of the lid and the closure element being formed such that it is also suitable for closing off the outlet opening.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to design the connecting element in such a way to allow the closure element to cap both the vent and the outlet because Applicant has not disclosed that the vent and the outlet being sealable using the same closure element provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with

different size or style plugs because a different style or size plug would also be effective at sealing the fluid from the interior of the chamber. Furthermore, upon selecting the appropriate size connections the closure element disclosed by Sander could be appropriately sized to be threaded onto the connecting element.

12. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. PG-Pub #2003/0209568 to Douglas et al. in view of U.S. Patent #5,588,562 to Sander et al.

Douglas in view of Sander teaches the invention as described above but fails to disclose the closure element being formed on the lid via a predetermined breaking point constructed as a pull off tab and can be torn off for closing the ventilation part or outlet opening.

Popovich et al. teaches that it is known to attach the closing element to the lid of the fluid reservoir. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a tab that connects closure element to the lid as taught by Popovich et al., since such modification would provide a lid that wouldn't get lost before being unattached as well as reducing the steps and components needed in manufacturing the device.

13. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. PG-Pub 2003/0209568 to Douglas et al in view of U.S. Patent 2,721,004 to Schultz.

In re claims 16 and 16, Douglas et al. discloses a fluid reservoir for a paint spray gun comprising a receptacle (container (8)), a lid (lid (10)) being placeable on the receptacle, a connecting element (connector tube (15)) being disposed on the lid for fluidly connecting the receptacle to a paint spray gun or an adapter; a ventilation part (vent hole (8a)) disposed on the receptacle.

Douglas et al. does not disclose a valve for selectively opening and closing the ventilation part by movement to first and second valve positions.

However, Schultz teaches it is known to provide a closure element which is capable of functioning as a valve by stopping fluid flow in the first closed position and allowing fluid flow when in the second position which would allow the pressure within the inside of the container to be equalized with the exterior environmental surrounding. The valve having valve housing(neck (10)), a closure element (cap (20)) having two valve seats (First seat located at the bottom of neck at threads (11) and second seat located at the top of the neck at threads (12)) configured in series in a direction of flow through the valve, the closure element being displaceable relative to the valve to move from the first position to the second valve position. The closure element having a rib (threads (23)) and the housing having two grooves (grooves of threads (11) & (12)) for receiving the rib, where the valve in the first position the rib is engaged with the first of the two grooves (groove of threads (11)) and when the valve is in the second position the rib is engaged with a second of the two grooves (groove of threads (12)), so when the valve is in the first position the closure element closes the ventilation part, and when in the second position the valve is opened allowing equalization of pressure between the inside of the receptacle and the exterior environment surrounding the receptacle when in the second valve position.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a closure mechanism taught by Schultz in Douglas, since such modification would allow for an easily opening and closing closure that would allow the mechanism to equalize the pressure inside the receptacle when the closure was in the open position.

Response to Arguments

14. Applicant's arguments filed 05/07/2009 have been fully considered but they are not persuasive.

Starting on page 10 of applicant's response, applicant argues that Copp, Jr. '426 did not disclose the connecting element being arranged on the lid, instead being attached to the receptacle. However, by the wording of the claims filed 08/08/2006 the receptacle did not positively recite that the connecting element need to be placed on the lid instead, allowing for the interpretation that the fluid reservoir has a connecting element, which the fluid reservoir consisted of both the receptacle and the lid.

On page 11 of applicant's responses, applicant argues that Copp, Jr. does not disclose the receptacle having a ventilation part, as the claims were worded, the valve housing for the ventilation part had to be arranged on the container, which under the broadest reasonable interpretation of the word container (which was the first usage of the word) the container was the fluid reservoir which was both the receptacle and the lid. Therefore the housing of the ventilation would have been arranged on the container thus giving the receptacle a ventilation part (open space that allows ventilation when the valve is open). However under the currently submitted claims (05/07/2009), applicant has amended claim 1 to positively recite the valve housing being located on the receptacle as opposed to the broader limitation of the container.

On page 12 of applicant's responses, applicant argues that thread engagement is not the same as a snap fit engagement, however with enough force applied to threads they can be forced to snap fit from one position to another.

Applicant further argues on page 12 that Shultz teaches a closure for a container and not a ventilation valve. However, a closure for a container functions as a valve (when closed

prevents fluid flow, and when open allows for the equalization of pressure inside the container by allowing fluid flow). Examples of pressure equalization can be seen for gas pressurized container when the closure (cap) is not sealed, the carbonation from the fluid has created a pressure within the container and upon opening the cap it functions as a valve allowing the pressure from within the bottle to equalize with the environment.

15. However, Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection necessitated by more specifically defining the location of the valve housing on the receptacle as opposed to the reservoir which was the broadest reasonable interpretation of the word container in order to overcome the prior art of reference.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUSTIN JONAITIS whose telephone number is (571)270-5150. The examiner can normally be reached on Monday - Thurs 6:30am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571)272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JUSTIN JONAITIS/
Examiner, Art Unit 3752
/Len Tran/
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